United States Court of Appeals for the Second Circuit



APPELLANT'S BRIEF & APPENDIX

76-7614

No. _76-7614

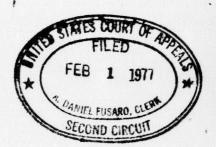
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT, N. Y.

KENIL K. GOSS,
Plaintiff-Appellant Pro Se

REVLON, INCORPORATED and its wholly owned subsidiary, USV PHARMACEUTICAL CORPORATION,

Defendants-Appellees

DISCRIMINATION APPEAL FROM THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK



BRIEF + APPENDIX

THE PLAINTIFF-APPELLANT'S

BRIEF

DATE: Tuesday, February 1, 1977

Delivered Personally by the Plaintiff-Appellant Today.

Plaintiff-Appellant Pro Se

K. K. Goss

THE GENTRY, APARTMENT 618
21 FAIRVIEW AVENUE
TUCKAHOE, WESTCHESTER, N. Y. 10707

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THE PLAINTIFF-APPELLANT'S BRIEF

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- (1) The Honorable Chief Justice Brian of England in 1477 (during the reign of Edward IV from 1461 to 1483), quoted by Lord Blackburn in the House of Lords decision in Brogden v. Metropolitan Railway Co., 2 Appeal Cases 692 (1877) a leading British case on securities fraud quoted by Sir William R. Anson in his well known student textbook on the Law of Contracts (abridged from his standard reference book), edited by Professor J. L. Brierly of Oxford University, England, 20th Edition (1952) at pp. 32 33.
- (2) The Honorable Chief Justice Warren E. Burger of the

 U. S. Supreme Court, quoted by Tom Goldstein in The

 New York Times, Sunday, December 21, 1975 (vide the

 Exhibit 3 to the plaintiff's reply affidavit dated

 June 7, 1976 i.e., Document No. (16) on p. 38 post).
- (3) The Honorable Chief Judge Irving R. Kaufman of the

 Second Circuit, quoted as in (2) above.
- (4) The Honorable Chief Judge David N. Edelstein of the 32, 40 SDNY, quoted as in (2) above, and in Fordham Law Review, Vol. XLIV in May, 1976 "The Ethics of Dilatory Motion Practice: Time For a Change" at page 1069.
- (5) Professor Victor Kramer of the Georgetown Law Center, Washington, D.C., quoted by Ernest Dickinson in The New York Times, Sunday, January 25, 1976 (vide the item (9) on page 7 of (and the Exhibit to) the plaintiff's affidavit dated April 30, 1976 i.e., the Document No. (14) on page 38 post).

ABBREVIATIONS USED IN THIS BRIEF

- (1) CCH = Commerce Clearing House, Inc., Chicago, Illinois, topical law publisher.
- (2) EEOC = Equal Employment Opportunity Commission.
- (3) EPD = "Employment Practices Decisions", published by Commerce Clearing House, Inc., containing reported court cases (mainly Federal) on employment discrimination.
- (4) FRAP = Federal Rules of Appellate Procedure (1972 Edition).
- (5) FRCS = Rules of Civil Procedure For The United States
 District Courts (1971 Edition).
- (6) REA = Railway Express Agency, Inc. (on pages 23 and 34 post).
- (7) SDNY = United States District Court For the Southern District of New York.
- (8) SUNY = State University of New York, of which the State
 University College at Geneseo is a part (on pages
 19, 24, 33 and 34 post).
- (9) U.S.C. = United States Code (1971 Edition).
- (10) USDC = United States District Court.
- (11) EDNY = United States District Court For The Eastern District of New York (on page v ante).
- (12) ED = Eastern District of the United States District Court.
- (13) ND = Northern District of the United States District Court.
- (14) UPI = United Press International, Inc. (in Crouch v. UPI and Smith v. UPI, both decided in the SDNY).

OTHER ABBREVIATIONS

- (15) Defendants = Defendants-Appellees in the present case at bar.
- (16) Plaintiff = Plaintiff-Appellant Pro Se and the members of his class, whom he has been representing, in the present suit at bar.

PART I

INTRODUCTION

INTRODUCTION

- (1) The plaintiff is an alien resident of the United States. He is not a lawyer and has had no benefit of any legal advice in preparing this brief.
- (2) This is the second appeal to the Second Circuit. The first appeal (under Docket Nos. 76-7015 and 76-7065) was heard by the Honorable Chief Judge Kaufman and by the Honorable Circuit Judges Mansfield and Meskill on Thursday, October 7, 1976.
- of the plaintiff's suit by the SDNY on November 16, 1976, inspite of the reversal and remand by the Second Circuit regarding the assertion of his claim under 42 U.S.C. 1981 filed on August 8, 1974. There was no hearing on the second dismissal action, in which the SDNY confirmed its first dismissal on November 7, 1975 as "sub silentio" and made "that ruling unequivocal", and made it "nunc pro tunc".
- (4) The plaintiff did not have the benefit of presenting his reply brief in connection with the first appeal, as the one submitted on October 4, 1976 (which combined both his final brief and his reply brief proper, as advised by the Pro Se Clerk's Office of the Second Circuit) was rejected by the Second Circuit because of its bulk.
- (5) Furthermore, the plaintiff did not have the benefit of presenting his proper and relevant argument during the hearing of the first appeal, as what he said therein was not relevant at all because of his ignorance of the appellate procedure.
- (6) The plaintiff has filed motions to reopen the original determination by the EEOC on October 17, 1973. These motions are currently pending before the plenary EEOC.
- (7) Having regard to the above mentioned facts, this brief will deal only with the plaintiff's claim under 42 U.S.C. 1981. The EEOC's counsel, R. K. Gupta, Esq., has kindly agreed to submit his brief amicus curiae in support of this second appeal.

PART II

ISSUES PRESENTED FOR REVIEW

ISSUES PRESENTED FOR REVIEW

(8) The issues presented on this second appeal for review by the Second Circuit are as follows:

(1) JURISDICTIONAL PREREQUISITES:

- (A) If this was an issue "sub silentio" in the minds of the trial judge and of the defendants and their attorneys, whether the plaintiff had complied with the jurisdictional prerequisites in respect of his assertion of claim under 42 U.S.C. 1981 by praying a leave under item (G) "Allowing the plaintiff to bring the jurisdiction of ... 42 U. S.C. 1981 .. (the Civil Rights Acts of 1866, 1870 ..) in his proposed amended complaint (in lieu of filing a separate suit against the same defendants ...) so as to enable him to obtain a more equitable relief, ... " on page 11 of his motion dated August 8, 1974.
- (B) Even assuming, arguendo, that the trial judge might have thought "sub silentio" that the foregoing assertion of the claim under 42 U.S.C. 1981 by the plaintiff was defective, for whatever reason, whether it would still be valid, in view of the clear provisions of Rule 8(e) and (f) of the FRCP.

(2) TIMELINESS OF PLAINTIFF'S CLAIM UNDER 42 U.S.C. 1981:

- (A) Whether the plaintiff had asserted his claim as aforesaid within the three years allowed under Section 214(2) of the New York Civil Practice Law and Rules, in his motion dated August 8, 1974.
- (B) Even assuming, arguendo, that his assertion was defective, for whatever reason, whether it would still be valid, in view of the tolling of the statutory period upheld by:

 (a) the Second Circuit in Dewatters IT 520 F2d 409 1975.
 - (a) the Second Circuit in DeMatteis II, 520 F2d 409, 1975;
 - (b) the SDNY in Crouch v. UPI, 74 Civ. 296, 1975; and
 - (c) the EDLa in Hambrick v. Royal Sonesta Hotel, 11 EPD 10,668, 1975.

- (3) ABUSE OF JUDICIAL POWER AND DISCRETION BY THE SDNY:
 - (A) Whether the SDNY had abused its power in "sub silentio" denial of the plaintiff's motion dated 8/8/74, and thereby depriving him from an opportunity to file another suit to assert his claim under 42 U.S.C. 1981 within the statutory 3 years.
 - (B) Whether it was an improper judicial conduct for a judge to remain stony silent to the plaintiff's repeated prayers four motions (August 8, 1974, August 28, 1974, September 16, 1974 and July 7, 1975) and one oral (September 27, 1974) to allow him to assert his claim under 42 U.S.C. 1981, when the statutory 3 year period was still running, and then to claim on November 16, 1976, presumably at the suggestion of the Second Circuit, that "I denied the said motion sub silentio in granting the cross-motion to dismiss. I hereby make that ruling unequivocal. Plaintiff's motion for leave to amend is denied nunc pro tunc".

(4) ERRONEOUS DECISION BY THE SDNY:

- (A) Whether the said denial by the SDNY was not only erroneous but also clearly erroneous, due to the following facts:
 - (a) The plaintiff's amended complaint contained no "new" fact, but contained only a timely assertion c: a "new" statute, namely 42 U.S.C. 1981.
 - (b) The plaintiff's "claim under 42 U.S.C. § 1981 arises out of the same "transaction or occurrence" set forth in the original complaint", as the Second Circuit has rightly pointed out in its judgment on the first appeal.
 - (c) The <u>defendants</u> have <u>had</u> the <u>notice of the same</u> nature of the claim ab initio.
 - (d) At no time the defendants had shown any prejudice to the plaintiff's assertion of the claim under 42 U.S.C. 1981, as can be readily seen from the fact that they never opposed any of the five motions by the plaintiff, mentioned under item (3)(B) supra, praying for a leave

- Goss v. Revlon and USV, 76-7614, USCA, 2nd Circuit Jan. 31, 1977 to assert his claim under 42 U.S.C. 1981.
 - (e) The "Appellees' moving papers which Judge Owen endorsed asked only that Goss' complaint be dismissed. However, in their memorandum of law in support of the cross-motion, they also conclude that the motion for leave to amend should be denied.", as the Second Circuit rightly observed as footnote 2 to its judgment on the first appeal. In other words, the SDNY granted more than what the defendants had asked for.
 - (f) The trial judge, by his own admission ("The court, having dismissed plaintiff's action, there is no need to decide this motion."), never considered the plaintiff's amended complaint, but only gave the summary judgment in favor of the defendants, as prayed in their cross-motion. How could the same judge now make a 180° turn ex post facto and claim that the "Plaintiff's motion for leave to amend is denied nunc protunc."? The contradiction is too obvious to require any further elucidation.
 - (g) The trial judge never proffered any reason for his "sub silentio" denial "nunc pro tunc".
 - (h) The trial judge never considered the fact that this layman plaintiff has been fighting for his just claim for the last five years, unassisted by any lawyer, as opposed to the defendants being represented by two prestigious law firms, in addition to their own vast corporate Legal Department, staffed by many capable and experienced lawyers.
 - (B) Whether the said denial by the SDNY was invalid, as it was made when the discovery process was still in progress and the trial judge specifically reserved his decision for the sale purpose of allowing the plaintiff to deliver xerox copies of the defendants' own secret documents to their attorneys by November 14, 1975? In fact, the "sub silentio" denial took place at the same moment the judge had ordered

or was ordering the plaintiff to deliver xerox copies of the defendants' own secret documents to their attorneys.

(5) BIAS OR PREJUDICE OF THE TRIAL JUDGE:

- (A) Whether the trial judge had shown bias or prejudice in not hearing the plaintiff's three motions (dated August 8, 1974, August 28, 1974 and September 16, 1974) at all, but hearing only the defendants' motion dated May 24, 1974, during the pre-trial "conference" on September 27, 1974, which was convened by the judge's law clerk, Peter Bloch, Esq., for the sole purpose of "to iron out various motions and to set a date for the trial to begin", to use his words.
- (B) Whether the trial judge had again shown bias or prejudice or prejudice in not hearing the plaintiff's two motions (dated July 7, 1975 and November 3, 1975) at all, but hearing only the defendants' papers (untimely filed 12 days too late dockted on October 14, 1975) during the hearing on November 7, 1975, which was convened by the judge's law clerk, John Mayer, Esq., for the sole purpose of hearing only the plaintiff's motion dated July 7, 1975.

(6) LACK OF JURISDICTION OF THE TRIAL JUDGE:

- (A) Whether the trial judge had acted without any jurisdiction in "sub silentio" denial "nunc pro tunc" on November 16, 1976 of the plaintiff's motion dated July 7, 1975, as the plaintiff had filed timely affidavits under 28 U.S.C. 144 on December 26, 1975, April 30, 1976 and May 20, 1976.
- (B) Whether the judge's "MEMORANDUM AND ORDER" dated November 16, 1976 was invalid, as the plaintiff had filed at the Second Circuit a valid and timely petition for rehearing on November 13, 1976, which was pending on November 16, and as the judge had issued his "MEMORANDUM AND ORDER" prior to the expiry of the 21 days for the issuance of the "Mandate" under Rule 41(a) of the FRAP.

PART III

STATEMENT OF THE CASE

STATEMENT OF THE CASE

GENERAL NOTE:

(9) The STATEMENT OF THE CASE contains only the facts and issues relevant to this second appeal. The full facts of the case can be found in the plaintiff's 63 page "Discrimination Brief" filed with the EEOC and with the NYSDHR on October 9 and 10, 1973 respectively (vide Exhibit 3 to the plaintiff's opposition motion dated November 3, 1975), and in the plaintiff's amended complaint dated July 7, 1975 (docketed on September 22, 1975).

NATURE OF THE CASE:

- (10) This is a civil suit for unlawful employment discrimination practices of the defendants against the plaintiff and the members of his class similarly situated under 42 U.S.C. 1981. The "claim under 42 U.S.C. § 1981 arises out of the same "transaction or occurrence" set forth in the original complaint,", as the Second Circuit has aptly ovserved in its judgment on the first appeal.
- (11) The plaintiff, not being a lawyer, was unaware of the existence of the Civil Rights Acts of 1866 and 1870, until a few days before the pre-trial hearing before the judge on Friday, March 29, 1974 at 10.30 a.m., while preparing therefor by studying in a library.
- the plaintiff had lost no time in seeking further information on how to go about asserting his claim thereunder. For this purpose, he went to the judge's chamber on April 4, 1974 in 26 Federal Plaza, New York, N. Y. 10007 in the afternoon. It was, however, on June 6, 1974 he had learnt the procedure for asserting his claim from the judge's law clerk, Peter Bloch, Esq. Based on that information, he had asserted his claim in his motion dated August 8, 1974 i.e., 456 days before the judge's "sub silentio" decision on November 7, 1975. The plaintiff could well have asserted his claim earlier, but for his preoccupation with his depositions, the defense motion dated May 24, 1974, his own motion dated June 3, 1974

- Goss v. Revlon and USV, 76-7614, USCA, 2nd Circuit Jan. 31, 1977 and with his brief dated August 28, 1974, in compliance with the judge's oral order on March 29, 1974. For further details, please see the paragraph (18) on page 6 of the plaintiff's reply affidavit dated June 7, 1976, (and item (E) on pp. 174 175 of the plaintiff's reply brief dated October 4, 1976, for reference by the defendants).
- (15) The plaintiff had sent his motion dated August 8, 1974 to the USDC and the defense attorneys by Special Delivery Certified Mail. Apparently due to a mistake, it was not delivered on Friday morning, August 9, 1974, but was returned to the plaintiff undelivered and unopened by the U. S. Postal Service on Monday, August 12, 1974. The plaintiff had mailed it for the second time (in another envelope, of course) to the Pro Se Clerk of the USDC by Special Delivery Certified Mail on the same day, together with a forwarding letter, at the telephone advice of the Pro Se Clerk. The motion was docketed on August 13, 1974.
- (14) The defense attorney had received the motion on Friday morning, August 9, 1974 and had confirmed it in the course of a telephone call from the plaintiff to him on Monday, August 12, 1974 from 4.10 p.m. to 4.14 p.m.
- (15) At this stage, it is well to note that the defendants are a nearly billion dollar corporate group with international operation. It has a large Legal Department, staffed by many capable and experienced lawyers. In addition, the defendants have permanently retained as their "Special Counsel" one of the country's most prestigious law firms, Paul, Weiss, Rifkind, Wharton & Garrison, (described by Tom Goldstein, a well known lawyer-journalist, in his article in The New York Times, Sunday, December 19, 1976, as "the Cadillac" of the legal profession), and are advised by the seniormost partner, Simon H. Rifkind, Esq., himself, for which the firm received \$551,138 in 1975. Mr. Rifkind, who is one of the nation's most prominent lawyers, was a judge of the SDNY for nine years, until his resignation in 1950 because of his inadequate pay of \$15,000 a year. Presumably, it was at the recommendation of either Mr. Rifkind himself or his firm, the defense attorneys have been retained to handle the present case at bar. The defense attorneys are an elegant medium size firm. The defense attorney

Goss v. Revlon and Ury, 76-7614, USCA, 2nd Circuit Jan. 31, 1977 handling this case, David Greene, Esq., is a very well qualified lawyer, with B.A.(Cornell) and J.D.(Harvard), and is licensed to practice before the U.S. Supreme Court. He is a partner of his firm, which is headed by his father, who is in life long practice. Yet, the fact remains that inspite of these superlatives, they never opposed the plaintiff's motion dated August 8, 1974. Their opposition 432 days later on October 14, 1975 was only against his motion docketed on September 22, 1975, and that too 12 days late.

COURSE OF PROCEEDINGS:

- (16) As has been noted above, the plaintiff had asserted his claim under 42 U.S.C. 1981 in his motion dated August 8, 1974, which was docketed on August 13, 1974. Not having heard anything about it from the SDNY, the plaintiff had taken up the matter briefly in his brief cum motion dated August 28, 1974 (vide item (B) on page 28).
- Office of the SDNY about the status of his above two motions, were frustrated by the Clerk's own internal rule, under which information over the telephone is supplied only to any duly admitted attorney handling a case before the SDNY, and not to a non-lawyer like the plaintiff. His only source of information was the Pro Se Clerk's Office. The latter, however, was so busy with many criminal cases that the plaintiff had received no information from the latter about the status of his two motions.
- However, on September 10, 1974 the plaintiff had received a telephone call from the defense attorney (from 10 a.m. to 10.10 a.m.), informing him that the judge's clerk, Peter Bloch, Esq., had just telephoned to the defense attorney notifying that a pre-trial "conference" to be held on September 27, 1974 at 11 a.m. for the sole purpose of hearing his above two motions. The defense attorney then had suggested to him to call Mr. Bloch (Telephone No. (212) 264 6133) to obtain further information thereon.
- (19) The plaintiff did call Mr. Bloch immediately, but line being busy, he was able to contact from 11.45 a.m. to 11.54 a.m., during which Mr. Bloch had assured him that the pre-trial "confer-

- ence was being convened for the sole purpose of "to iron out various motions and to set a date for the trial to begin", to use Mr. Bloch's own words. Realizing that a busy judge could easily overlook the matter, the plaintiff had drawn attention thereto in his motion dated September 16, 1974 (vide item (F) on page 3).
- (20) During the pre-trial "conference" on September 27, 1974 at 2.45 p.m. (having been postponed from 11 a.m.) in the judge's chamber to the courtroom No. 2804 the judge said at the outset that he would not be able to hear all the matters that were slated to be heard on that date, as I was about to leave the City, and the time was already well past 4 p.m. The judge, however, had enough time to listen to the defense attorney, who was then seeking discovery of the plaintiff's 63 page Brief, (filed with the EEOC and with the NYSDHR on October 9 and 10, 1973 respectively), on which the judge ruled in favor of the defendants, overruling the plaintiff's objection and ordering him to deliver a copy of the said Brief within the next ten days (which was so delivered by Certified Mail on October 7, 1974 in compliance thereof). The judge even had time to explain to the defense attorney about the procedure for the summary judgment, being asked to do so by the latter. The judge, however, said nothing on the plaintiff's assertion of his claim under 42 U.S.C. 1981, or on his prayer for a leave to submit his amended complaint. When the plaintiff again sought the leave to submit his amended complaint, the judge replied that: "I can't rule on that, until I see it". The judge then said to the defense attorney that he would like to refer any further unresolved discovery matter to the U.S. Magistrate and then left the chamber. For further details, please see items (12) and (14) on pp. 1 - 2 and 4 respectively of the plaintiff's supplementary affidavit dated May 20, 1976.
- (21) The plaintiff had interpreted the judge's reply that the judge would receive the amended complaint, which was ready in early 1975, but the plaintiff could not submit it because of the defense discovery motions, documents to be delivered, pretrial hearing, etc. Again during the pre-trial hearing on May 2, 1975 the judge said nothing on the plaintiff's assertion of his claim under 42 U.S.C.

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1981, but imposed upon this unaffluent plaintiff an arbitrary fine
of \$50 payable (and paid) to the defense attorneys, who did not
even pray for it. For what? For the defendants' persistent and
wilful failure to mail a copy of the judge's order dated December
11, 1974 favorable to them on their string of spurious discovery
motions, so as to enable the plaintiff to comply therewith in
delivering xerox copies of their own documents showing conclusively
of their long standing (since 1941) unlawful employment discrimination.

- July 7, 1975. But his sudden illness had prevented him from mailing it, until September 17, 1975, and was docketed on September 22, 1975. It was only after receiving it, this Harvard trained defense attorney finally thought that it was about time to oppose the plaintiff's renewed assertion of his claim under 42 U.S.C. 1981 docketed on September 22, 1975. So, after 432 days the defendants for the first time opposed it, but it was 12 days too late than is allowed under Rule 15(a) of the FRCP. By then, of course, 3 year period of limitation under the New York State statute had expired, so that the pleading of the statute as a defense had the appearance of legitimacy on the face of it.
- (23) On September 24, 1975 the judge's clerk, John Mayer, Esq., had scheluded a hearing on Friday, October 17, 1975 at 2.15 p.m. for the sole purpose of hearing the plaintiff's motion and amended complaint dated July 7, 1975. But on October 14, 1975 the defense attorneys had filed their motion for the summary judgment. In other words, it took 23 days (from September 18, 1975 to October 10, 1975) just to write a few pages by this defense attorney, inspite of his outstanding academic credentials of B.A.(Cornell) and J.D.(Harvard). Because of this 11th hour defense submission, the hearing was postponed to Friday, November 7, 1975.
- During the hearing the judge did not consider the plaintiff's assertion of his claim under 42 U.S.C. 1981 at all one of the purposes of the hearing and we have already noted the judge's own words (vide item (f) on page 6 ante). Instead, the judge went on to consider the defendants' untimely motion (12 days too

Goss v. Revlon and USV, 76-7614, USCA, 2nd Circuit Jan. 31, 1977 late) for the summary judgment. As prayed by the defense attorney, the judge ordered the plaintiff to deliver to the defense attorneys by November 14, 1975 xerox copies of the defendants' own secret documents, showing conclusively of their "corporate lawlessness on a multi-national scale" (the sensational disclosure of which was published in The New York Times, Tuesday, October 5, 1976, and is under criminal investigation by the Federal law enforcement agencies). He then said "I am going to reserve decision on these motions.", and repeated in conclusion "I am reserving decision on your motion and on Revlon's motion." (vide page 5 of the transcript). The judge, however, granted the summary judgment to the defendants, as prayed in their untimely motion (12 days too late), and dismissed the plaintiff's complaint on the same day, possibly at the same moment, unknown to the plaintiff, and thereby causing this unaffluent plaintiff out of pocket expenses amounting to \$530.87, which the defense attorneys have refused to reimburse to him in contempt of court.

(25)The judge had ordered both the parties as far back as on March 29, 1974 to submit their respective briefs on or before the trial date, which was originally slated to be held on Monday, June 17, 1974. The trial was, however, cancelled on June 6, 1974 (as the judge was then away in Washington) and the plaintiff was informed by his clerk, Peter Bloch, Esq., to submit his brief (based on information of the judge's clerk, Peter Sudler, Esq., on April 4, 1974), to quote Mr. Bloch's words, "as soon as possible, but there is no rush, for the brief must be fully informative". This plaintiff (inspite of being a non-lawyer, writing English only as his second language on his old and worn-out typewriter without any typing skill) was able to submit his brief (of 28 pages + forwarding letter + affidavit of service + 'blue-back' = 31 pages + 28 case exhibits, comprising 111 pages = 142 pages in all) dated August 28, 1974, which was sent by Certified Mail on August 30, 1974, and docketed on September 3, 1974. The defense attorneys, on the other hand, never submitted their brief, in contempt of court. What they did submit was not, however, the brief, as ordered by the judge on March 29, 1974, but only a memorandum of law in

Goss v. Revlon and USV, 76-7614, USCA, 2nd Circuit Jan. 31, 1977 support of their motion for the summary judgment, that too 564 days late (from March 29, 1974 to October 14, 1975). Thus the plaintiff had no idea as to what position the defendants had then taken since the receipt of the plaintiff's summons on December 18, 1973 at 9.40 a.m. This lack of knowledge for the 666 days (from December 18, 1973 to October 14, 1975, both days inclusive) had gravely hampered the vigorous prosecution of the suit by this layman plaintiff. Although the plaintiff had drawn this fact to the attention of the judge during the hearing on November 7, 1975, the remained stony silent on this grave 'non-doing' on the part of a lawyer, who has received his law degree from the world's most prestigious law school - the sheepskin which even many American lawyers envy and which a native of a backward land can only dream. Furthermore, the judge allowed the undated and untimely "DEFEND-ANTS' MEMORANDUM OF LAW", on the basis of which he then granted them the summary judgment.

But that is not the worst. The judge also displayed his bias (26)or prejudice against the plaintiff, or his suit, or the both, by not considering his opposition motion (40 pages + 'blue-back' + forwarding letter = 42 pages, together with 33 exhibits, comprising 182 pages = 224 pages in all) dated, filed and docketed on November 3, 1975. In that opposition motion the plaintiff had not only "set forth specific facts showing that there" was "a genuine issue for trial" (as required under Rule 56(e) of the FRCP), but also submitted xerox copies of the defendants own documents, including three sworn by their top corporate officers, in support thereof. The plaintiff had also shown therein that the affiant of the AFFIDAVIT IN SUPPORT OF CROSS-MOTION dated October 9, 1975 had no "personal knowledge" (as required under Rule 56(e) of the FRCP) in the subject matter. The defense attorneys had procured it by subornation of perjury for the sole purpose of obtaining the summary judgment in favor of the defendants. The signature thereon appears to be a forgery. Although the "AFFIDAVIT" is purported to be sworn, but there is no signature of the notary, but only the rubber stamp of the defense attorney himself. Although the plaintiff had drawn the attention of the judge during the hearing on November 7, 1975, he, however, remained stony silent to these

- Goss v. Revlon and USV, 76-7614, USCA, 2nd Circuit Jan. 31, 1977 serious white-collar crimes. Instead, he granted the summary judgment in favor of the defendants, based on the perjury, subornation of perjury and possibly also forgery, without even reading one word of the plaintiff's extensive submission, and we have already noted the judge's own admission thereon under item (f) on page 6 ante.
- On December 10, 1975 the plaintiff had filed a timely letter-(27)affidavit, attaching therewith a xerox copy of the decision in Moses v. Falstaff Brewing Corp., 525 F2d 92 (8th Cir., November 4, 1975; published by CCH on. November 20, 1975 as 10 EPD 10,467), showing the correct date of termination of his employment as June 6, 1972 (computed in the light of the Moses ruling), a xerox copy of which was also sent to the defense attorneys by Certified Mail on the same day. On December 12, 1975 the defense attorneys wrote a letter to the judge, disputing the computation of the termination date, but conceding it to be March 31, 1972, instead of March 7, 1972, as they had claimed earlier. They, however, reverted to the latter date in their undated brief filed with the Second Circuit in connection with the plaintiff's first appeal. The judge never ruled on that letter-affidavit, and is, presumably, still an undecided issue pending at the SDNY.
- (28) On December 15, 1975 the plaintiff learnt for the first time, in the course of a telephone call by the defense attorney from 4.15 p.m. to 4.25 p.m., that the judge had given the summary judgment to his clients and had dismissed the plaintiff's suit on the same day of hearing on November 7, 1975. Because of the dislocation caused by the reorganization and mechanization of the Clerk's Office of the SDNY, the latter was unable to inform the parties of the judge's actions until December 16, 1975.
- (29) On December 16, 1975 the plaintiff went to the Clerk's Office of the SDNY to obtain further details of the judge's actions and to consult with the Pro Se Clerk of the SDNY about the procedure for an appeal against the judge's actions and inactions.
- (30) Based on that advice, the plaintiff had filed on December 22, 1975 his (i) Notice of Appeal at the SDNY, and (ii) Motion to Reopen the original determination of the EEOC dated October 17,

- Goss v. Revlon and USV, 76-7614, USCA, 2nd Circuit Jan. 31, 1977 1973 in the light of the Moses ruling. The latter has since then been pending for consideration by the plenary EEOC.
- On December 26, 1975 the plaintiff had filed his Motion For a New Trial under Rule 59 of the FRCP, asserting once more his claim under 42 U.S.C. 1981 (vide item (B)(a) on page 4), which was also the required affidavit under 28 U.S.C. 144 for bias or prejudice of the judge. The judge, however, had treated it "as a motion to reargue under Local Rule 9(m)" and promptly denied it on December 31, 1975, disregarding the fact that he was incompetent to do so by virtue of the clear prohibition under 28 U.S.C. 144. The defense attorneys did not oppose that Motion.
- Motion to Reopen is response to two long distance telephone calls from the EEOC's headquarter in Washington on March 3, 1976. The EEOC had assured him that if it could find any reasonable benefit of doubt as to the timeliness of his charge filed on March 20, 1973, it would certainly accord it to him. The matter is still pending before the plenary EEOC. This liberal view, although in keeping with many leading court decisions (including that of the Second Circuit in Voutsis and Egelston cases), was not evinced at all by the judge in the same spirit in the plaintiff's case at bar.
- (33) On April 30, 1976 the plaintiff had filed his detailed affidavit under 28 U.S.C. 144. On May 20, 1976 he had filed his supplementary affidavit under 28 U.S.C. 144. On June 7, 1976 he had filed his reply affidavit in response to the defense attorney's AFFIDAVIT IN OPPOSITION dated May 6, 1976.
- (34) On May 6, 1976 the plaintiff had filed his Interim Brief for the first appeal. His Final Brief cum Reply Brief (combined at the advice of the Pro Se Clerk's Office of the Second Circuit) was submitted on October 4, 1976, but, because of its bulk, the Honorable Chief Judge Kaufman denied its acceptance "in the form presented" on October 5, 1976.
- (35) The oral argument was heard by the Second Circuit on October 7, 1976 and its judgment was published on October 29, 1976, which the plaintiff had received on November 3, 1976. He had filed his

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Petition For Rehearing on November 13, 1976, followed by his

First Supplement thereto on November 16, 1976. The Second Circuit had considered it on December 20, 1976, but denied it without stating its reason therefor.

- After the publication of the judgment and after the Petition was filed, but before the issuance of the "mandate" under Rule 41 of the FRAP, the trial judge had issued his "MEMORANDUM AND ORDER" on November 16, 1976 (received by the plaintiff on November 24, 1976), stating inter alia as quoted under item (3)(B) on page 5 ante.
- (37) The plaintiff has filed his timely Notice of Appeal at the SDNY on December 2, 1976, and Forms C and D at the Second Circuit on December 15, 1976, in respect of his present second appeal.

DISPOSITION IN THE LOWER COURT:

- (38) The disposition of the plaintiff's suit in the SDNY was marked by the following five characteristics:
 - (A) The alacrity of the SDNY to grant all the defense discovery motions, however palpably dilatory, presumably in the hope that the suit might thereby "go away" as has been pointed out by Ernest Dickinson (a well known writer) in the Business and Finance Section of The New York Times, Sunday, January 25, 1976 (vide the Exhibit attached to the plaintiff's affidavit under 28 U.S.C. 144 dated April 30, 1976).
 - (B) The reluctance of the SDNY to hear the suit, possibly because of "the tendency of judges to let cases drag on hoping they'll go away", according to Professor Victor Kramer of the Georgetown Law Center and quoted by Mr. Dickinson in his said article. The aforesaid reluctance was contrary to the Congressional mandate for a speedy trial under Section 706(f)(5) of the Title VII of the Civil Rights Act of 1964, introduced by the Equal Employment Opportunity Act of 1972.
 - (C) The silent refusal of the SDNY to appreciate the fact this nonlawyer (using English as his second language) in his poor health has been fighting for his just rights during the last

- four years with the EEOC, NYSDHR, U. S. Department of Labor and at the SDNY without the benefit of any legal counsel and pitted against the defendants' vast corporate Legal Department staffed by many able and experienced lawyers, Simon H. Rifkind, Esq. ('a Goliath of the legal profession') and his vast and prestigious firm, and the defense attorneys (vide the paragraph (15) on pp. 10 11 ante, for further details). The aforesaid refusal is wholly inconsistent with the letter as well as the spirit of the landmark decision of the U. S. Supreme Court in Love v. Pullman Co., 404 U.S. 522, January 17, 1972.
- (D) The denial of the SDNY to apply liberal interpretation to the plaintiff's present case at bar, and in particular his assertion of his claim under 42 U.S.C. 1981. This was in conflict with the many leading decisions of the U.S. Supreme Court in Love v. Pullman Co. (supra), of the Second Circuit in Voutsis v. Union Carbide Corp. (supra) and in Egelston v. SUNY (supra), and of the SDNY itself in Smith v. UPI, 74 Civ. 555 (JMC), in Crouch v. UPI, 74 Civ. 296 and in Brisbane v. Port Authority of N.Y. and N.J., 76 Civ. 1548 by the trial judge himself.
- (E) The lack of recognition of the fact that the defendants had shown no prejudice even to the slightest degree at any time by the assertion of the plaintiff's claim under 42 U.S.C. 1981. Again, this was in sharp conflict with any of the decisions mentioned above.
- (39) Because of the above five characteristics, the SDNY at no time had considered any of the plaintiff's five efforts to have the assertion of his claim under 42 U.S.C. 1981 made on August 8, 1974 accepted by the SDNY. The trial judge, however, now claims that he had denied all of the plaintiff's aforesaid efforts, at unknown point or points of time, for unknown and unexplained reason or reasons, but only in his own mind. It is now for the Second Circuit to decide whether or not the justice was served by silence, and what had prevented the judge to say simply the two letter word "no" on September 27, 1974 so as to enable the plaintiff to file a new suit in respect of his claim under 42 U.S.C. 1981 when the 3 year period of limitation was not yet over.

PART IV

ARGUMENT

ARGUMENT

(40) The argument presented in this brief in support of the plaintiff's assertion of his claim under 42 U.S.C. 1981 on August 8, 1974 are as follows (following the same sequence as under the ISSUES PRESENTED FOR REVIEW in the paragraph (8) on pp. 4 - 7 ante):

(1) JURISDICTIONAL PREREQUISITES:

- (A) The plaintiff is not aware if this was an issue, at least a silent one, in the minds of the trial judge and of the defendants and their attorneys. There is no jurisdictional prerequisite for a civil suit under 42 U.S.C. 1981.

 Johnson v. Railway Express Agency, Inc., 421 U.S. 454;

 9 EPD 10,149 (Exhibit 32 to the plaintiff's opposition motion dated November 3, 1975) " ... the filing of a Title VII charge and resort to Title VII's administrative machinery are not prerequisites for the institution of a § 1981 claim." (at page 7673 of EPD). Please see also the Second Circuit's own opinion on the first appeal of the plaintiff's present case at bar " .., appellant's failure to meet the jurisdictional requirements of Title VII does not preclude his cause of action under § 1981." (at page 331).
- (B) Even assuming, argüendo, that the plaintiff's layman'sEnglish (quoted under (8)(1)(A) on page 4 ante) was not
 upto the standard of legalism of a lawyer, his assertion
 was still valid, as Rule 8(e) of the FRCP provides that:
 "No technical forms of pleading or motions are required.",
 and as Rule 8(f) of the FRCP commands that: "All pleadings
 shall be so construed as to do substantial justice".

 Although the plaintiff had drawn the attention of the
 judge to the above quote inspiring provisions of the FRCP
 as far back as on August 28, 1974 (vide items (6) and (7)
 on page 7 of his brief), the judge obviously did not read

Goss v. Revlon and USV, 1-7614, USCA, 2nd Circuit Jan. 31, 1977 it at all. Furthermore, "Such technicalities are particularly inappropriate in a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process." -Love v. Pullman Co. (supra; vide also item (5) on page 27 of (and Exhibit 26 to) the plaintiff's brief dated August 28, 1974). Please see also Smith v. UPI (supra; vide also item (7) on page 28 of (and Exhibit 28 to) his said brief) - "Court is mindful of the fact that the present complaint, as well as that made to the EEOC, is the product of an "unlettered" layman and is, therefore, entitled to broad construction in order that the remedial purposes of the Act to be effectuated." (per Cannella, D.J.). Finally, the trial judge himself has quoted from Sanchez v. Standard Brands, Inc., 431 F2d 455 (5th Cir., 1970); 2 EPD 10,252 (vide Exhibit 17 to his reply brief dated October 4, 1976 for reference by the defense attorneys) -"We must ever be mindful that the provisions of Title VII were not designed for the sophisticated or the cognoscenti " - as footnote 5 to his decision in Brisbane v. Port Authority of N.Y. and N.J. (supra; vide also 12 EPD 11,059 (Exhibit 66 of his said reply brief) at page 4940).

(2) TIMELINESS OF PLAINTIFF'S CLAIM UNDER 42 U.S.C. 1981:

- (A) The assertion of the <u>plaintiff's</u> above claim <u>was timely</u>, as August 8, 1974 was well within the statute of limitation of three years under Section 214(2) of the New York Civil Practice Law and Rules, and has been so recognized by the Second Circuit itself in its judgment on the first appeal by the plaintiff of the present case at bar (at page 331).
- (B) Even assuming, arguendo, that the plaintiff had failed to file his above captioned claim within the 3 year period, his right to file another suit in respect of the said claim still subsists, because of the tolling recognized in: the three cases cited under (8)(2)(B) on p. 4 ante; Griffin v. Illinois, 351 U.S. 12, 26 (1956) "(w)e should not indulge in the fiction that the law now announced has always been the law and, therefore, that those who did
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avail themselves of it waived their rights."; and Chevron
Oil Co. v. Huson, 404 U.S. 97, 105-109 (1975). Hence the
law prior to the Johnson v. REA (supra), as enunciated in
Guerra v. Manchester Terminal Corp., 498 F2d 641, 5th Cir.,
July 31, 1974, still governs the plaintiff's case at bar.

(3) ABUSE OF JUDICIAL POWER AND DISCRETION BY THE SDNY:

- (A) It was a gross abuse of judicial power and discretion on the part of a judge to deny "sub silentio" of his right to assert his claim under 42 U.S.C. 1981 when the statute of limitation had not yet expired. How is it possible for even a lawyer (let alone a layman) to know what was in the judge's mind? Indeed, the Chief Justice Brian of England once observed that: " it is trite learning that the thought of man is not triable, for the devil himself knows not the thought of man;" - Year Book 17 Edward IV (1461 - 1483), i.e., in 1477, in chapter 1. This dictum was quoted by Lord Blackburn in the House of Lords in Brogden v. Metropolitan Railway Co., 2 Appeal Cases 692 (1877) - a leading British case on fraud by false prospectus issued by that company to raise its share capital by public subscription - quoted by Sir William R. Anson in "Principles of the English Law of Contract and of Agency in its relation to Contract", 20th Edition (1952) edited by J. L. Brierly (this is the student edition, abridged from Anson's famous work). it is tempting to ask, how long it would have taken for the judge to say just "no" during the pre-trial "conference" on September 27, 1974, which was convened by his law clerk, Peter Bloch, Esq., for the sole purpose of determining the issue by saying either "yes" or "no"? Had the judge said "no", there was then still plenty of time to file a new suit in respect of the same claim.
- (B) It was an improper judicial conduct for a judge to remain stony silent to the plaintiff's repeated prayers. Such a conduct on the part of a lawyer would be sufficient for his or her expulsion from the bar.

Goss v. Revlon and USV, 76-7614, USCA, 2nd Circuit Jan. 31, 1977 (4) ERRONEOUS DECISION BY THE SDNY:

- (A) The arguments thereunder have already been advanced under item (4)(A) on pp. 5 - 6 ante. Even the U. S. Supreme Court has recognized the importance of lack of prejudice shown by the defense, as here, as a strong mitigating factor in favor of the plaintiffs - "The respondent makes no showing of prejudice to its interests." - Love v. Pullman Co. (supra; 4 EPD 7623 at page 5438, last paragraph). Please see also Braddix v. Charles Todd, Inc., USDC, ED, Illinois, 74-110-E, December 10, 1975; 11 EPD 10,611 (vide Exhibit 18 to the plaintiff's reply brief dated October 4, 1976 for reference by the defense attorneys) - " the interests of justice substantially outweighs any prejudice to the defendant., substantial discovery still remains to be conducted and the case is not close to a trial date." - in which "a motion to amend a job discrimination suit alleging racial bias to include claims alleging age bias and racially segregated job classifications was granted where the case was not close to a trial date and it was in the interest justice to have all the related issues tried together." (CCH's editorial summary note on page 6554 on 11 EPD).
- (B) The judge conduct described under (8)(4)(B) on page 6 ante amounted to condemning a plaintiff behind his or her back without allowing him or her to prove his or her case. Such a procedure has been condemned by the U. S. Supreme Court in Conley v. Gibson, 355 U.S. 41, November 18, 1957; 1 EPD 9656 (vide item (1) of (and Exhibit 2 to) the plaintiff's brief dated August 28, 1974), and by the Second Circuit in Egelston v. SUNY, in which the Honorable Chief Judge Kaufman (with the concurrence of Clark, Associate Justice and Timbers, C.J.) in the course of judgment said: "Dismissal of a complaint—before any discovery has taken place or an answer filed—is even more drastic." (at page 4740 of 12 EPD 11,004 submitted as Exhibit 1 to the plaintiff's reply brief dated October 4, 1976 for reference by the defense attorneys).

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- (5) BIAS OR PREJUDICE OF THE TRIAL JUDGE:
 - (A) The trial judge had all along shown bias or prejudice against either the plaintiff, or his suit, or the both. At the same time, he had shown partiality towards the defendants, perhaps unconsciously. The judge was then newly appointed by the ex-President Nixon and came from lifelong law practice. For these reasons, he was probably so conditioned to acting as a defense counsel to his former clients that he had shown no sympathy for the plaintiff in poor health fighting for his just rights, unassisted by a trained lawyer. This explains the reasons why he offered information to the defense attorney regarding -(i) the reference of the defense discovery motion to the U. S. Magistrate on March 29, 1974, and (ii) the summary judgment procedure on September 27, 1974. The high point of his bias or prejudice reached on May 2, 1975 when he arbitrarily imposed upon this unaffluent plaintiff a fine of \$50 payable (and paid on June 11, 1975) to the defense attorneys, who did not even pray for it. " the imposition of a penalty upon the unaffluent appellants not only would cause undue hardship but it would also tend to undermine the policy of financially assisting complainants in Title VII suits." - per Gewin and Bell, C.JJ and Bootle, D.J. in Miller v. International Paper Co., 408 F2d 283, 5th Cir., February 26, 1969; 1 EPD 9968 (vide item (3) on page 26 of (and Exhibit 24 to) the plaintiff's brief dated August 28, 1974) - and the Fifth Circuit condemned the penalty as an "abuse of Discretion by Trial Court", and said that: "The penalty assessment, therefore, cannot stand." (at pp. 1495 - 1496 of 1 EPD 9968). The trial judge in the plaintiff's present case at bar did not at any time display the "equities", "wide latitude", "flexible stance", and so on, that he talks about so admirably and eloquently in his scholarly judgment in the Brisbane case (supra), quoting liberally from the Second Circuit's rulings in the <u>DeMatteis</u>, <u>Weise</u> and <u>Egelston</u> cases. <u>Those</u> were not just there in the plaintiff's case in 1974 - 1975.

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- It is no exaggeration to say that this plaintiff had received better consideration from the judge's able and promising clerks, particularly from Peter Bloch and John Mayer, Esqs., than from the judge himself. It was Mr. Bloch, who had convened the pre-trial "conference" on September 27, 1974 for the sole purpose of "iron out various motions and to set a date for the trial to begin". But the judge had shown thereat his bias or prejudice in not hearing the plaintiff's motions dated August 8 and 28, 1974 at all, but ruled only on the defense motion against the plaintiff and advised the defense attorney as to the procedure for obtaining the summary judgment.
 - (B) The judge had shown once more his bias or prejudice in not either reading or considering the plaintiff's motions dated July 7, 1975 and November 3, 1975, but ruled only on the untimely filed defense motion for the summary judgment, and denied "sub silentic nunc pro tunc" the plaintiff's timely assertion of his claim under 42 U.S.C. 1981, which the defendants did not even oppose. Even after 432 days (from August 9, 1974 to October 14, 1975, both days inclusive), they did not oppose it. What they did seek was not the denial in their motion (untimely, albeit), docketed on October 14, 1975, as has been correctly pointed out by the Second Circuit in its judgment on the first appeal.

(6) LACK OF JURISDICTION OF THE TRIAL JUDGE:

- (A) The judge had acted without jurisdiction on December 31, 1975 on the plaintiff's motion dated December 26, 1975 and on November 16, 1976 in his "sub silentio nunc pro tunc" MEMORANDUM AND ORDER, in view of the clear language of 28 U.S.C. 144 "..., such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding". His acts were, therefore, ultra vires.
- (B) The MEMORANDUM AND ORDER dated November 16, 1976 was also invalid as the plaintiff's Petition for Rehearing was then pending before the Second Circuit and the "Mandate" had not then been issued under Rule 41(a) of the FRAP.

- Goss v. Revlon and USV, 76-7614, USCA, 2nd Circuit Jan. 31, 1977 FURTHER ARGUMENTS AND CITATIONS:
- (41) In addition to the foregoing argumer's and citations on pp. 21 26, the following arguments and citations should be noted:
 - (A) CONTINUING DISCRIMINATION: The plaintiff had alleged it ab initio in his (i) charge filed with the EEOC on March 20, 1973, (ii) statutory affidavit filed with the EEOC on October 9, 1973, (iii) "Discrimination Brief" (consists of 63 pages) filed with the EEOC on October 9, 1973, (iv) original complaint docketed on December 12, 1973, (v) brief docketed on September 3, 1974, (vi) amended complaint docketed on September 22, 1975, (vii) opposition motion docketed on November 3, 1975, and (viii) oral argument on November 7, 1975. How can anyone go wrong when he says in clear English "I am complaining that this is still continuing because of the tort and continuing contract against me. There is a continuing tort against me." (page 1 of the transcript of the hearing on November 7, 1975)? The judge remained stony silent, as if he did not hear it, as he had ignored all of the previous seven allegations.

Case Citations:

- (a) Boudreaux v. Baton Rouge Marine Contracting Co., 437 F2d 1011, 5th Cir., February 1, 1971; 3 EPD 8107 (vide Exhibit 6 to the plaintiff's reply brief dated October 4, 1976 for reference by the defense attorneys). The continuing discrimination claim under 42 U.S.C. 1981 was sustained.
- (b) Macklin v. Spector Freight Systems, Inc., 478 F2d 979, D.C.Cir., May 9, 1973; 5 EPD 8605 (vide Exhibit 12, ibid). The court similarly sustained continuing discrimination claim under 42 U.S.C. 1981. This case is important, as the Second Circuit has relied upon it in its judgment on the first appeal by the plaintiff of the present case.
- (B) CLASS ACTION: The plaintiff had similarly alleged it 8 times (stated under (A) above). Again the judge had ignored them, and during the hearing on November 7, 1975 denied it, without even completely hearing what the defense attorney was then saying against it, and in fact by cutting him short in the

- middle of a sentence. The judge gave no opportunity to the plaintiff what he had to say in favor of a class action. In the Macklin case (vide item (41)(A)(b) on page 27 ante) the class action claim under 42 U.S.C. 1981 was upheld by the D.C. Circuit, by reversing the lower court, in circumstances quite similar to the plaintiff's present case at bar (vide pp. 7778 7779 of 5 EPD 8605).
- (C) UNOPPOSED ASSERTED CLAIM: The fact that the plaintiff had duly and timely asserted his claim under 42 U.S.C. 1981 in his motion dated August 8, 1974, which the defendants never opposed, was sufficient to dispense with the leave requirement of Rule 15(a) of the FRCP, in which case the defendants were deemed to have consented thereto "sub silentio". This view is fortified by the fact that the defendants, in contempt of court, did not comply with the judge's oral order on March 29. 1974 for submission of their brief on or before June 17, 1974. Even on September 27, 1974 their attorney had an opportunity to oppose the plaintiff's motions, but did not do so and limited himself only to the defense discovery motion, and thereby giving the judge an impression that his clients were consenting "sub silentio" to the plaintiff's assertion of his claim under 42 U.S.C. 1981. The doctrine of "sub silentio" cuts both ways - the "denial" (as the judge claims), as well as the "consent", for the simple reason that when the silence is construed as being equivalent to a speech, it can be for the "yes" as well as for the "no" - this is the measure of risk the party remaining silent takes. Battle v. The National Bank of Cleveland, USDC, ND, Ohio, 364 F.Supp. 416, September 25, 1973; 6 EPD 8893 (vide Exhibit 25 to the plaintiff's reply brief dated October 4, 1976 for reference by the defense attorneys). In this case the court rejected the defense contention that the court "should dismiss the complaint with leave to file an amended complaint limited to plaintiff's alleged Section 1981 claim.", for the simple reason that "In filing its motion to dismiss plaintiff's complaint, defendant made no objection to plaintiff's allegations setting forth a a cause of action under 42 USC § 1782. The court has difficulty

- Goss v. Revlon and USV, 76-7614, USCA, 2nd Circuit Jan. 31, 1977 perceiving the applicability of this statute to the subject matter of this case. Being unchallenged, however, it remains an asserted cause of action." (footnote 2 at page 5812 of 6 EPD 8893). It also held that the "Allegations made in the claim were not to be stricken because of the dismissal under one statute unless they clearly had no possible bearing on the subject matter of the court action." (CCH's editorial summary at page 5811). Please see also Belt v. Johnson Motor Lines. Inc., 458 F2d 443, 5th Cir., April 4, 1972; 4 EPD 7751 (vide Exhibit 42 to the plaintiff's reply brief dated October 4, 1976 for reference by the defense attorneys) - "Additionally, we note that the district court's dismissal order did not speak to appellants' allegations under 42 U.S.C. § 1981. Consequently, we Reverse and Remand for determination of what is in essence a factual question " (at page 5897 of EPD). The Belt case is quite similar to the Macklin case - both were class actions, continuing discrimination and also 1981 claims. (Both the cases have been discussed under item (E) on page 167 of the plaintiff's reply brief dated October 4, 1976 for reference by the defense attorneys).
- (D) DEFENSE LACHES AND MISCONDUCTS: These were legions and inexcusable on the part of any lawyer, let alone a B.A.(Cornell) and J.D.(Harvard) and assisted by many lawyers, possibly including Simon H. Rifkind, Esq. himself. Their wilful contempt of court in not filing their brief, as ordered by the judge on March 29, 1974, has caused a grave harm to the plaintiff's case, as without it he had no idea as to the defense position.
- (E) PROCEDURAL AMBIGUITIES: The procedural ambiguities are always held in favor of the victoms in civil rights cases. Sanchez v. Standard Brands, Inc., (vide item (40)(1)(B) on page 22 ante) the defendants' most favorite case, in the plaintiff's present case at bar. Moses v. Falstaff Brewing Corp., (vide paragraph (27) on page 16 ante). In the plaintiff's present case at bar, there were such procedural ambiguities (such as, the date of termination of the plaintiff's employment, extennuating circumstances, etc.), which the judge did not rule in favor of the plaintiff.

(F) ARBITRARY FINE OF \$50: The matter has already been presented under item (5)(A) on page 25 ante and the reason for bring it here is to present another aspect of the same fact. Although the trial judge had remained completely silent on such an important issue as the plaintiff's assertion of his claim under 42 U.S.C. 1981 on August 8, 1974 for no less than 452 days (from August 13, 1974 to November 7, 1975, both days inclusive), which would be 827 days upto and inclusive of the date of the MEMORANDUM AND ORDER on November 16, 1976, just to say "yes" or "no" to the said claim. the judge, however, inspite of his busy calendar, found enough time to hear the defense attorneys' discovery motion docketed on April 21, 1975 promptly within 11 days on May 2, 1975. The motion was only a part of their long practice of "the strategy of obstruction". In short, it was a sham and could well have been obviated long time ago by their simply mailing to the plaintiff a copy of the judge's order on December 11, 1974 in respect of their earlier motion dacketed on November 13, 1974. Indeed, the judge had sensibly suggested just that - "Now, I am going to suggest, counsel, that from now on when you get these that you serve by mail a copy on your adversary and this won't happen again." (vide page 2 of the transcript of hearing on May 2, 1975). The judge's clerk, Peter Bloch, Esq., had similarly assured the plaintiff (in the course of the latter's telephone call to the judge's chamber on Thursday, June 6, 1974 from 2.10 p.m. to 2.25 p.m.) that, to quote Mr. Bloch's words: "It is defense attorney's duty to keep you informed on his motion". The defense attorneys, however, adamantly refused to mail a copy of that order to the plaintiff, inspite of two telephone requests by the latter on Friday, January 24, 1975 from 10.45 a.m. to 10.50 a.m. and again on Wednesday, April 30, 1975 from 10.30 a.m. to 10.35 a.m. After saying the above quoted sentence, the judge, however, went on to charge the plaintiff, as if only he was to be blamed. In fact, the transcript shows nothing else. He then arbitrarily imposed the fine upon this unaffluent plaintiff, inspite of his entreaty to consider his mitigating circumstances. The judge even refused to see the plaintiff Page 31

Goss v. Revlon and USV, 76-7614, USCA, 2nd Circuit Jan. 31, 1977

after his return to his chamber at the end of the hearing of all the other motions, as the plaintiff wanted an extention of time to submit xerox copies of 7,452 pages of the defendants' own documents. Presumably, the judge was busy in his chamber. There was, however, a roar of mirth coming from there when his clerk, Peter Bloch, Esc., had returned there after conveying the refusal message. Being thus unsuccessful, the plaintiff then wrote a letter to the judge on May 6, 1975, which the judge turned down apparently without any consideration of the plaintiff's plight mentioned in his letter.

Further Details:

- (a) The plaintiff's answer dated April 24, 1975 (undocketed but on file of the SDNY) to the defense motion docketed on April 21, 1975.
- (2) The transcript of hearing on May 2, 1975.
- (3) The plaintiff's letter to the judge docketed on May 9, 1975.
- (4) The plaintiff's affidavit dated April 30, 1976 under 28 U.S.C. 144 (item (6) on pp. 4 6).
- (5) The plaintiff's reply affidavit dated June 7, 1976 (items from (30) to (43) on pp. 9 16).

Case Citations:

(1) Miller v. International Paper Co., 408 F2d 283, 5th Cir., February 26, 1969; 1 EPD 9968. One of the judges was the newly appointed Attorney General Griffin Bell. The court said: "We heartily agree that the discretion of the trial court must be broad if it is to direct the course of the proceedings before it. But as we stated in B. F. Goodrich Tire Co. v. Lyster, "(a)lthough a trial judge's latitude in framing orders and in penalizing failures to comply is broad, his discretion is not limitless." This court will not uphold the imposition of an unjustified penalty.

.... The whim of counsel and the strategy of obstruction have no recognized place in federal procedure." (at page 1495 of EPD under "(Discretion of Court)"; citations omitted).

.... Page 32

(2) Sobel v. Yeshiva University, 75 Civ. 2232 (GLG), SDNY,
July 1, 1976; 12 EPD 11,157 (vide item (5) on page 199
of (and Exhibit 68 to) the plaintiff's reply brief dated
October 4, 1376 for reference by the defense attorneys).
The court said: "While we do not suggest that these motions
have been made for the purpose of delay, they have undoubtedly had (and if the court were to consider all of the
arguments raised, would continue to have) such an effect.
Such a result is not in the interests of justice. See
"The Ethics of Dilatory Motion Practice: Time For a Change"
by Chief Judge Edelstein, Fordham Law Review, Vol. XLIV,
p. 1069, May, 1976." (at page 5312 of EPD).

Summary:

Thus, in the plaintiff's present case at bar, the trial judge had acted contrary to the above quoted obiter dicta by:

- (i) imposing an arbitrary and totally unjustified fine of \$50 upon this unaffluent pro se plaintiff in poor health in terrorem, which the defense attorneys did not even seek, either in their motions or orally on May 2, 1975;
- (ii) ignoring the defense "strategy of obstruction"; and
- (iii) lending himself, perhaps unwittingly, to the never ending defense machinations of chain discovery motions, to the extent of spending his entire time in hearing on May 2 on matters absolutely of no consequence to the defendants themselves (as the subsequent events proved), but not hearing even for a fraction of a second of the plaintiff's long standing and repeatedly asserted claim under 42 U.S.C. 1981.
- (G) NON-LAWYER PRO SE PLAINTIFF: The trial judge never appreciated the plaintiff's handicap, contrary to Haines v. Kerner, 404 U.S. 519 (1971) "the Court must look upon pro se complaint with a liberal eye." (quoted by Cannella D.J. of the SDNY in Smith v. UPI (supra; vide also 8 EPD at page 5283).
- (H) <u>DEFENDANTS' MULTI-NATIONAL LAWLESSNESS AND SECRET DOCUMENTS:</u>
 The trial judge had committed a serious error in not allowing

- Goss v. Revlon and USV, 76-7614, USCA, 2nd Circuit Jan. 31, 1977
 the defense discovery process to its grand finale, considering the facts that:
 - (a) it was, after all, the defense attorneys who had sought the discovery of the defendants' own top secret documents, inspite of the plaintiff's vehement opposition thereto, in the hope of keeping his case less complex than it is now after the discovery, and particularly after the entry of the Federal law enforcement agencies as a direct result of the sensational disclosures forced upon the plaintiff by the defense attorneys;
 - (b) it was, after all, the judge himself who said that: "I am reserving decision on your motion and on Revlon's motion.", for the sole purpose of allowing the discovery of the defendants' own top secret documents to continue; and
 - the discovery, if allowed to its logical conclusion, would have shown that plaintiff's abrupt dismissal was directly related to his allegation of continuing employment discrimination, and thereby showing that there was indeed "a genuine issue for trial", as provided by Rule 56(e) of the FRCP.

Case Decisions:

- (1) <u>Jaroslawicz v. Seedman</u>, <u>2nd Cir.</u> (vide Exhibit 1 of the plaintiff's motion dated December 26, 1975 as reported in The New York Times, Saturday, December 20, 1975). The opinion delivered by the Honorable Chief Judge himself.
- (2) Egelston v. SUNY, 2nd Cir., (vide item (B) on page 24 ante).
- (3) Noble v. University of Rochester, 2nd Cir. (a companion case to Egelston v. SUNY), June 7, 1976, 76-7133.
- (4) Grant v. Bethlehem Steel Corr., 76 Civ. 847, SDNY, July 29, 1976; 12 EPD 11,127. Enarp, D.J. said: "Because material issues of fact surrounding employment discrimination claims were unresolved, there were proper matters to be left for trial and therefore summary judgment was correctly denied, as was a motion for its reargument".

Goss v. Revlon and USV, 76-7614, USCA, 2nd Circuit Jan. 31, 1977 SUMMARY OF ARGUMENT:

- (42) The following is the summary of the plaintiff's argument stated on pp. 21 33 ante:
 - (A) JURISDICTIONAL PREREQUISITES: There are no jurisdictional prerequisites for a civil suit under 42 U.S.C. 1981 (vide item (40)(1)(A) on page 21 ante).
 - (B) DEFECTIVE PLEADINGS: The plaintiff's defective pleadings, if any, have been automatically 'cured' by Rule 8(e) and (f) of the FRCP and by repeated acquiescences and laches of the defense attorneys for 432 days (vide item (1)(B) on pp. 21 22 ante).
 - (C) TIMELINESS: The assertion of the plaintiff claim under 42 U.S. C. 1981 on August 8, 1974 was timely, as it was within the three year period allowed by the New York State Law (vide item (2)(A) on page 22 ante).
 - (D) TOLLING OF STATUTORY PERIOD: The New York State statute of limitation is still tolled, as the U. S. Supreme Court ruling in Johnson v. REA (supra) has no retroactive effect (vide item (2)(B) on pp. 22 23 ante).
 - (E) ABUSE OF JUDICIAL POWER: There was an abuse of judicial power on the part of the judge by his remaining stony silent for 827 days in just saying the two-letter word "no" to the plaintiff's assertion of his claim under 42 U.S.C. 1981 on August 8, 1974 (vide items (3) on page 23 and (F) on page 30 ante).
 - (F) ERRONEOUS DECISION BY THE SDNY: It was an erroneous decision by the SDNY in granting the summary judgment to the defendants, when there were at least two important issues pending viz., the date of termination of the plaintiff's employment and the defendants' own secret documents that would have shown continuing discrimination both of which were challeng d by them (vide items (4) on page 24 and (H) on pp. 32 33 ante).
 - (G) BIAS OR PREJUDICE OF THE TRIAL JUDGE: It has been most aptly described in Egelston v. SUNY (vide item (5) on pp. 25 26).
 - (H) LACK OF JURISDICTION OF THE TRIAL JUDGE: Item (6) on page 26.

D

PART V

CONCLUSION

CONCLUSION

- (43) Having regard to the foregoing submission, the plaintiff prays for the following reliefs:
 - (A) The "MEMORANDUM AND ORDER" of the SDNY dated November 16, 1976 be set aside and the assertion of his claim under 42 U.S.C. 1981 made on August 8, 1974 be reinstated as a class action nunc pro tunc to the date of the original suit filed and docketed on December 12, 1973.
 - (B) The imposition of the fine of \$50 upon the plaintiff by the SDNY on May 2, 1975 be set aside and the defendants be ordered to refund it forthwith to the plaintiff together with his cost incurred thereon and interest at the legal rate compounded daily from June 11, 1975 to the date of such refund.
 - (C) The case be remanded to the SDNY for a speedy trial by any judge other than the trial judge, the Honorable Richard Owen, similar to the <u>Egelston</u> and <u>Noble</u> cases (supra).
 - (D) The defense attorneys be ordered to withdraw from the case, as their misconducts have rendeded its speedy trial almost impossible.
 - (E) The Second Circuit kindly reconsiders its decision on October 29, 1976 regarding the plaintiff's claim under the Title VII, as the trial judge's persistent and wilful abuse of his judicial powers and discretions, serious errors, reluctance to try the case and other unacceptable and improper judicial conducts have vitiated the plaintiff's constitutional right to a speedy and fair trial, and have slurred the fair name of the American justice, which beacons as a guiding light for the rest of the mankind still groping in the darkness in search of freedom and justice.
- We can conclude this brief no better way than the newly appointed Attorney General Griffin Bell (with his two colleagues on the bench) concluded in the historic Miller v. International Paper Co. (supra) "it is unthinkable that a citizen of this great country should be relegated to unremitting toil with never a glimmer of light in the midnight of it all".

PART VI

APPENDIX TO THE BRIEF

AND

EXHIBITS

(45) LIST OF PLAINTIFF'S PAPERS RELEVANT TO THIS SECOND APPEAL

No.	No. Documents		Filing		Items Referred	
no.		Place	Date	Items	Pages	
(1)	Original Charge	EEOC	Mar.20,1973	(i) and	(j)	
(2)	Statutory Affidavit	11	Oct. 9,1973	Front a	nd back	
(3)	"Discrimination Brief"	11	Oct. 9,1973			
(4)	Original Complaint	SDNY	Dec.12,1973	THE REAL PROPERTY AND PERSONS ASSESSED.	The state of the later of the l	
(5)	Opposition Motion	11	Aug.13,1974			
(6)	Brief in Support of Case	11	Sep. 3,1974	THE RESERVE AND PARTY OF THE PA		
(7)	Motion For Relief, etc.	"	Sep.18,1974			
(8)	Answer to Defense Motion	- 11	Apr.24,1975			
(9)	Letter to Hon. Owen, D.J.		May 9,1975			
(10)	Amended Complaint	11	Sep.22,1975			
(11)	Opposition Motion	11	Nov. 3,1975	(5) on	page 36	
(12)	Letter to Hon. Owen, D.J.	п	Dec.12,1975			
(13)	Motion For a New Trial	11	Dec.26,1975			
(14)	Affidavit under 28 U.S.C. 144	11	Apr.30,1976			
(15)	Supplementary Affidavit	11	May 20,1976	Whole o	fit	
(16)	Reply Affidavit	"	Jun. 7,1976	Para.5,	pp.9-16	

(46) NOTES:

- (1) It has been submitted as the Exhibit "D" attached to the defendants' "AFFIDAVIT IN SUPPORT OF CROSS-MOTION" docketed on October 14, 1975. The item 7(i) and (j) shows conclusively that the plaintiff had indeed (a) asserted a class claim, and (b) alleged the continuing unlawful employment discrimination.
- (2) It has been submitted as an attachment to item 11. of the original complaint (i.e., pocument (4) above) and again as the Exhibit 20 to the plaintiff's opposition motion docketed on November 3, 1975 (i.e., Document (11) above). Once more, it shows the class nature of his complaint and his allegation of the defendants' continuing employment discrimination.
- (3) It has been submitted as the Exhibit 3 to the above Document (11). Again it shows (a) the class nature of the plaintiff's claim, (b) the defendants' continuing discrimination, and (c) the defendants' "corporate lawlessness on a multi-national scale".

 Page 39

- Goss v. Revlon and USV, 76-7614, USCA, 2nd Circuit Jan. 31, 1977
- (4) The items 5 and 5.a on page 2 shows, once more, the plain-tiff's allegation of continuing employment discrimination.
- (5) The item (G) in particular on page 11 (already quoted under item (8)(1)(A) on page 4 ante) clearly shows that the plaintiff had duly asserted his valid and timely claim under 42 U.S.C. 1981 on August 8, 1974 the first of six such notices.
- (6) The item (B) on page 28 clearly shows that the plaintiff had prayed that "The hearing of this case be postponed further so as to allow this pro se plaintiff to file an amended complaint, as prayed under item (I) on page 11 of his affidavit of August 8, 1974." - the second of 6 such notices.
- (7) The item (F) on page 3 "The plaintiff be allowed to submit his amended complaint." was the third of 6 such notices.
- (8) This document was not docketed in time (possibly due to lack of certificate of service upon the defendants), but is on file, nevertheless. The second copy was delivered to the judge's clerk, Peter Bloch, Esq., on May 2, 1975, which is also on file with his side underlining on the left hand margin in pencil. It shows that inspite of the plaintiff's willingness to deliver copies of the defendants' own documents to their attorneys, the judge imposed the arbitrary fine of \$50 upon the plaintiff and payable to the defense attorneys.
- (9) It shows that the judge did not reconsider the plaintiff's plight by vacating his fine of \$50.
- (10) It shows the REASONS FOR THE AMENDED COMPLAINT in general on pp. 2 4, and in particular the plaintiff's assertion of his claim under 42 U.S.C. 1981 the fifth of 6 such notices (the fourth was made orally on September 27, 1974).
- (11) It shows the sixth such notices, prior to the dismissal.
- (12) It shows that it was a genuine material issue in dispute, on which the judge has not yet ruled, unless it was yet another of his "sub silentio" dismissal at an unknown date.
- (13) The judge again did not consider the plaintiff's valid and timely claim under 42 U.S.C. 1981.

- Goss v. Revlon and USV, 76-7614, USCA, 2nd Circuit Jan. 31, 1977
- (14) It was a valid and timely affidavit made in good faith under 28 U.S.C. 144, which disqualified the judge from issuing the "MEMORANDUM AND ORDER" made on November 16, 1976. It also shows that the judge had disregarded the canon of judicial ethics by imposing upon this unaffluent plaintiff in poor health the arbitrary fine of \$50, which was not even prayed by the defense attorneys, either in writing or orally on May 2, 1975 (vide item (6) on pp. 4 - 6). Such a total and irrational disregard of the plaintiff's right would not be condoned by the newly appointed Attorney General Griffin Bell, who wrote the Miller decision when he was a judge of the Fifth Circuit. It also shows that the judge allowed the defense attorneys 564 days (from March 29, 1974 to October 14, 1975) to submit their brief (item (4) on pp. 3 - 4). It also shows the judge's other unacceptable "non-doing" and bias or prejudice against the plaintiff, or his suit, or the both (items from (7) to (11) on pp. 6 - 8). The Exhibit attached thereto contains comment quite similar to the one made by the Second Circuit in the Egelston case.
- (15) It contains further details of the judge's bias or prejudice, in not considering at all of the plaintiff's timely and valid:

 (a) amended complaint (item (12) on pp. 1 2), (b) class action (item (13) on page 3), and (c) assertion of his claim under 42 U.S.C. 1981 (items (14) on page 4, (D) on page 7).

 It also contains other details thereof.
- (16) It contains the plaintiff's rebuttals of the misleading or untrue allegations contained in the defense attorneys'
 "AFFIDAVIT IN OPPOSITION" dated May 6, 1976. It also contains details of many misconducts and other serious "non-doing" by the defense attorneys. Such serious deficiencies on the part of many practising attorneys have been criticized by the Honorable Chief Justice of the United States, Warren E.

 Burger, by the Honorable Chief Judge Kaufman of the Second Circuit, by the Honorable Chief Judge David N. Edelstein of the SDNY, by the judges of the SDNY and EDNY, law professors and the press (vide Exhibit 3 for another Tom Goldstein's article in The New York Times, Sunday, December 21, 1975).

(47) LIST OF DEFENDANTS' PAPERS RELEVANT TO THIS SECOND APPEAL

- (1) The letter from the defense attorney to the trial judge dated December 12, 1975, disputing the plaintiff's contention in his letter-affidavit (vide items (45)(12) on page 38 and (46)(12) on page 39 ante), as to the date of termination of his employment by the defendants and as to the applicability of the recent ruling by the Eighth Circuit in Moses v. Falstaff Brewing Corp., and thereby showing that there was a genuine material issue for the trial. The issue is still pending at the SDNY, unless the judge had dismissed it in his own mind, without letting anyone to know, at an unknown point of time.
- (2) The defense "AFFIDAVIT IN OPPOSITION" dated May 6, 1976, showing that having had 564 days (from March 29, 1974 to October 14, 1975), the defendants were still complaining that the "Defendants were not given additional time to submit a brief but rather submitted a brief in support of their motion for summary judgment when such motion was filed." (paragraph 4. on page 2). That means that they never complied with the judge's oral order on March 29, 1974 in contempt of court. This gross non-compliance of the judge's order has gravely undermined the plaintiff's vigorous prosecution of his case, to which he is entitled. Although the plaintiff had pointed it out to the judge during the hearing on November 7, 1975, the judge remained stony silent thereto. The judge similarly, by his own admission, did not read the plaintiff's opposition motion (vide item (45)(11) on page 38), which contains (under item (V) on page 34) the same fact of the defense attorneys' gross and wilful non-compliance of the judge's order.
- (3) The undated "BRIEF FOR DEFENDANTS-APPELLEES" (mailed on June 7, 1976), which contains in many places (for example, in the last paragraph before the "CONCLUSION" on page 19) the dispute as to the date of termination of the plaintiff's employment (in fact, by contradicting the defendants' own documents earlier, and that of the defense attorney himself referred to under (47)(1) supra), which was a genuine material issue for the trial.

 ... Page 42

(48) LIST OF COURT PAPERS RELEVANT TO THIS APPEAL

- (1) Transcript of hearing on May 2, 1975. It shows that the SDNY spent a valuable part of its time at public expense on matters of no consequence to satisfy "The whim of counsel and strategy of obstruction" (to borrow from the Miller case, vide items (1) on page 31 and (iii) on page 32 ante), but did not consider even for a fraction of a second of the plaintiff's long standing and repeated assertion of his claim under 42 U.S.C 1981. It also shows the judge's arbitrary imposition of the fine, which was not even prayed by the defense attorneys.
- (2) Transcript of hearing on November 7, 1975. It shows that the SDNY again remained silent for the 8th time to the plaintiff's assertion of his claim under 42 U.S.C. 1981, and to his allegation of continuing discrimination (vide page 1) and of the defendants' own secret documents (vide page 5). All of these constituted genuine material issue for a trial and hence the summary dismissal of the plaintiff's complaint was an abuse of judicial power and discretion.
- (3) The memorandum order on November 7, 1975 (Exhibit A). It shows that the SDNY had dismissed the plaintiff's suit, while on the same day it had ordered the plaintiff to deliver copies of the defendants' secret documents to their attorneys, and thereby causing him in his present unaffluent circumstances needless expenses in the amount of \$532.99, which the defense attorneys have refused to reimburse to him in contempt of court.
- (4) The memorandum order on November 11, 1975 (Exhibit B). It shows clearly that the SDNY, by its own admission, did not even consider the plaintiff's opposition motion dated November 3, 1975 in granting the summary judgment in favor of the decadants.
- (5) The memorandum order on December 31, 1975 (Exhibit C). It shows that the SDNY for the 9th time had refused to recognize the plaintiff's right to a hearing of his valid and timely asserted claim under 42 U.S.C. 1981.
- (6) The memorandum order on November 16, 1976 (Exhibit D).
- (7) The docket sheet of the SDNY (Exhibit E).

PART VII

CERTIFICATE OF GOOD FAITH

AFFIDAVIT OF SERVICE

SIGNATURE

AND

NOTARIZATION

CERTIFICATE OF GOOD FAITH IN MAKING THIS AFFIDAVIT

(49)I, Kenil K. Goss, being the plaintiff-appellant pro se in this appeal, solemnly declare and swear that all the factual allegations contained in this brief (from page 1 to page 42) have been made in complete good faith, and only in pursuit of justice to the violations of my constitutional civil rights and my contractual rights under the New York State common law of contracts and that of the members of my class (whom I have been representing in this appeal as their "private attorney general"), and with "malice towards none" of those persons mentioned or referred to, directly or indirectly, in any part of this brief or of any document or paper referred to therein.

AFFIDAVIT OF SERVICE

(50) A xerox copy of this brief is being delivered today, Tuesday February 1, 1977, by the plaintiff-appellant pro se personally to the attorneys of record for the defendants-appellees, Aberman & Greene, Esgs., Attorneys at Law, 540 Madison Avenue, New York, N. Y. 10022, in compliance with Rule 25(d) of the FRAP.

SIGNATURE

Plaintiff-Appellant Pro Se

NOTARIZATION

Sworn to before me on this 1st Day of February, 1977.

CARMEN E. CASIANO
NOTARY PUBLIC, State of New York
No. 24-5643490
Qualified in Kings County
Commission Expires March 30, 19.28

somen & Carrano

CLERK

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

U. S. COURT HOUSE - FOLEY SQUARE NEW YORK, N. Y. 10007

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300

Mailed on Dec. 16, 1975

K. K. GOSS

DEC 1 8 1975



Kenil K. Goss 21 Fairview Ave. Apt. 618 Tuckahoe, N.Y. 10707 Containing Memorandum decision by Owen, J. dated November 7, 1975, dismissing my suit and allowing the decense motion for summary judgment and dismissal.

Exhibi+A

PRO SE OFFICE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK UNITED STATES COURT HOUSE, FOLEY Sq. NEW YORK, N.Y. 10007

DHTE 10-15-75

KENIL K GOSS 21 FAIRVIEW AVE APT 613 TUCKAHOE N.Y. 10707

TITLE GOSS -v- U.S.V. PHARMACEUTICAL CORP.

DOCKET NUMBER 73 civ 5286

Mailed on

DECISION DATE

Nov 7,1975

K. K. GOSS

JUDGE

: OWEN

DEC 1 8 1975

THERE IS ENCLOSED HEREWITH A COPY OF A DECISION FILED AND ENTERED IN THE ABOVE ENTITLED PROCEEDING.

YOURS TRULY

RAYMOND F. BURGHARDT JOEL BLUM

Bu

DEPUTY PRO SE CLERK

c.c.

ABERMAN GREENE AND LOCKER 540 MADISON AVE NEW YORK, N.Y. 10022

Index No. Year
73 Civ. 5286 (R.O.)
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF

KENIL K. GOSS,

Plaintiff.

-against-

USV PHARMACEUTICAL CORPORA-TION and REVLON, INC.,

Defendants.

COLY

MOTICE OF CROSS-MOTION AND AFFIDAVIT

ABERMAN, GREENE & LOCKER
Attorney for Defendants
Office and Post Office Address

540 Madison Avenue

Borough of Manhattan New York, N. Y. 10022
TEMPLETON 2-7979

To Se

Esq

Attorney for

MEMORITA DVOL 9261 1 1 VOV

MICHOFILM

United States District Court
FOR THE
SOUTHDRY DISTRICT OF HELL YORK

RELIL K. GOSS,
Plaintiff Pro So,
ot al

REVLON, INC. and its wholly owned subsidiary, USV PHARMACEUTICAL CORPORATION

DISCRIMINATION CIVIL ACTION

Coff Coly for Met 11/3/2

Piro Se

Plaintiff

The court, having dismissed plainty, action, there is no need to decide

11/10/18

JO ORDERED

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> K. K. GOSS DEC 16 1975

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
UNITED STATES COURTHOUSE
FOLEY SQUARE, N. Y. 10007

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

K. K. GOSS

Mailed on + JAN - 9 1976

JAN 10 1976
POSTAGE AND FEES PAIR

Received on -> JAN 10 1976 UNITED STATES COURTS



Containing Owen, I's Memo decision dated December 31, 1975 on my motion for a new trial dated December 26, 1975

PRO SE OFFICE UNITED STATES DISTRICT COURT SOUTHOUS DISTRICT OF NEW YORK UNITED STATES COURT ECUCE, FOLEY Sq. MEU YORK, N.Y. 10007

KENIL K GOSS Apr 518 21 FAIRV EW AVE TUCKAHOE N.Y 10707

TITLE

; GOSS-v- REVLON JAN 1 0 1976

DOCKET HUMBER

73 civ 5286

K. K. GOSS

DECISION LATE

DEC31.1975

JAN 10 1976

JUDGE : OWEN

THERE IS ENCLOSED DEREWITH A COPY OF A DECESION FILED AND ENTERED IN THE ABOVE ENTITIED PROCEEDING.

YOURS TRULY

RAYMOND F. BURGHARDT

Ey J. BIU!

DEPUTY PRO SE CLERK

c.c.

Linited States District Court
FORTHE
SOUTHERN DISTRICT OF NEW YORK

MILL K. GOSS,

Plaintiff Pro Se

v.
REVLON, INC. and its
wholly owned subsidiary,
UBV PHARMACEUTICAL CORPORATION
Befordants

DISCRIMINATION CIVIL ACTION

December 26, 1975

THE PLAINTIFF'S MCTION FOR A NEW TRIAL AGAINST THE SUMMARY JUDGMENT BY OWEN, J, RECEIVED BY THE PLAINTIFF ON DECEMBER 18, 1975.

Kenil K. Joy

Treating their are a motion to reargue render does Pale 9(m); the motion is denied.

The Con Dec. 31, 1975

U.S. D.J.

So-gedired

Mailed on > JAN 9 1976

Received on > JAN 10 1976

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

U. S. COURT HOUSE - FOLEY SQUARE NEW YORK, N. Y. 10007

OFFICIAL BUSINESS FENALTY FOR PRIVATE USE \$300

Mailed on Nov. 19, 1976 NOV 24 1976





Containing Owen, I's denial of my motion for leave to amend my complaint, after remand by the

Exhibit D

field USDC ofSDNY Exhibit D Mailed on Nov. 19, 1976 (Friday) UNITED STATES DISTRICT COURT Received SOUTHERN DISTRICT OF NEW YORK K. K. GOSS NOV 24 1976 KENIL K. GOSS, Plaintiff, : 73 Civ. 5286 -against-MEMORANDUM AND ORDER REVLON, INC. and Its Wholly Owned Subsidiary, USV PHARMACEUTICAL CORP-ORATION, Defendants. OWEN, District Judge The Court of Appeals having remanded this action for a determination as to the plaintiff, Kenil K. Goss' motion for leave to amend, I observe that the Court in its per curiam opinion correctly conjectured that I denied the said motion sub silentic in granting the cross-motion to dismiss. I hereby make that ruling unequivocal. Plaintiff's motion for leave to amend is denied nune pro tune. So Ordered. November 16, 1976. United States District Judge

JUDGE OWEN 73 UN 5286 Jury demand date:

INITED STATES DISTRICT COURT



TITLE OF	CASE			ATTORNEYS	
	. ** **	For	plaintiff		•
RENIL K.GOSS VS.		Ken	il K. Good	(Fro Se)	01.8 noe,NY10707 793-4661)
VS.		" Th	e Gentry H	ouse, Apt. 6	1.8
,		21	rairciew	Ave. Tuckat	oe, NY10707
USU PHARMACEI	TICAL CORPORATION	-1		(914)	793-4661)
REVLON, INC.	DITCAL CORPORATION				
REVEON, INC.					
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		For	defendant:		
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Basis of Action: Civil	Docket fee	4,2476	Cars	5	
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c.2000e-5.	Witness fees				
Action arose at:	Depositions	1			
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DATE	PROCEEDINGS	Date ()
12.2		Intraer.
1 ca.8-/	Filed Complaint and Issued Summons.	
ian. 3-7	Filed Oral prosection of allest an 27/17/	NOSL
11. 22-74	dailed notice of the la cheer.	
1/2/174	pre-trial before Cin 42. Li	
Jan . 22-74	Filed summons & return-served USV Pharmaceutical 1-10-74 and Revion Inc. 12-18-73.	
and the second second		
May 30,7	Filed Deft's Affdyt and Notice of Motion for pltff to produce for inspection	
Jun 13.74	and copying a certain 03 page statement. Filed Affidavit of Service in response to Defense motion & pltffs. motion for	
	reliefs, by pltff, on 5/24/74. &Affidavit in response to Defense motion	•
13.75	& Pltffs, motion for reliefs, XXXXXXXXXXX ret. 6/17/74.	
14.74	Find Plafe. Motion of eljectics to Report of L.S. Magistrate Raby. Filed Memo. End. on motion did. 5/30/74. Motion granted person: the report of Mag. Raby did. 7/31/74 (mailed notice)	
13 14.74	arito Report of magi . He aby.	
1 1 4 4 1 7 1 1 1	Filed plff's motion in response to defense Answer dated 1-7-74- Filed pltff's motion for relief from order dated 6-12-74	
127.24	Filed memo endorsed on merion filed 9-18-74-Pitil. is directed to turn over th	
'ap. 30474	Filed memo godorsed on marion filed 9-18-74-Pitfl. is directed to turn over th	
U	The door act accurate the series the	
	is dimissed and an order to that effect shall be submitted. So Ordered-Owen, J.	
lov 13.74	Filed Defts. Notice of Motion for order to produce documents for inspection.	
	fet. 11/22/14.	
ov 20 74	Filed pltff's motion for a protective order & in opposition to deft's motion. Filed Memo. End. on motion dtd. 11/13/74. Referred to Magistrate Raby to Hear &	-
	ACPULL, 30 Urdered Oven I. (mailed notice)	- 3
c. 13-74	Filed supplemental Report of Magistrata-Roby	74,
- 13-74	Filed memo endorsed on Report of Magistrate MabyConfirmed and made the order of this CourtOwen, J.	e de la companya de l
13-74	Filed Report of Magistrate Raby.	
pr 21.75	Filed Defts, affidavit and notice of motion for an order dismissing complaint.	
ay 6-75	ret. 5/2/75. Filed memo endorsed a motion filed 1.21-75This motion is decided in accordance	1.5
	with the minutes of 1973. 30 () deted = Out I Wailed matter	
y 7-75 F	ited pitti s answer to delense morion	4
ay 9-75 F	iled letter dated 5-5-75 from ploff. to Judge Owen	4.00
un17-75	Filed memo endorsed on letter filed this date Application denied. Owen, J. Filed memo endorse a that this application is withdrawn on the request of defter counsel in a letter dated June 12, 1975. Owen, J. Mailed Watter	
7-22-75	riled lifts Affid vit	
	Filed Liffs Affid vit, amended complaint and Notice o' Motion to my oral request rible on 9-27-7 before wen, J.	17
10-14-75	Filed De f ta Affidavit & Notice of Marion for an order granting auto-	
	The last of the state of the last of the l	
memet 2	Plied delta mamorandum of law	
11-3-75	filed Pltfs affidavit in opposition to pltfs motion for leave to serve an amended	comple
11-10-7	Filed defts Affidavit in epposition to pltffs motion for leave to serve an amended filed Pltffs affidavit in opposition to refts motion for a summary judgment of filed memo endorsed, on motion filed 10-11-15: The pltffs motion is granted. The pltff has failed to comply with requirement of 12 U.S.C. 2000 Open I	
11-11-7	he pltff has failed to comply with re quirement of 12 U.L.C. 2000, Owen, J. Filed memo endorsed on metion filed 11-3-75: The Court having dismissed pltffs	
	action - there is no me	
11-11-7	Filed acfts reply affidavit to nltcs occi.	
	Filed dofts reply affidavit to pltifs affidavit etc, as indicated.	
	CONID ON FROE 3	

Civ. 5286

12-12-75 Filed Pitff's. Dith for 1 tow End. 12-30-75 Filed Pitff's. Dith for 1 tow End. 10-06-76 Pited Pitff's. Dith for 1 tow End. 10-106-76 Pited Pitff's. Dith for 1 tow End. 10-105-76 Pited Pitf's. Dith for 1 tow End. 10-105-76 Pited Pitf's return of ppeal from the decision nature. 10-103-76 Pited Pitf's return of appeal (sevised or supplementary) from Section nature. 10-23-76 Pited Pitf's return of appeal (sevised or supplementary) from Section nature. 10-23-76 Pited natice of certification 5 transmittal of the record on appeal to the V.S.C. 10-33-76 Pited Pitf's. affidavit under 28 U.S.C. 'M. bias or producte of the Judge. 10-30-76 Pited Pitf's. affidavit under 28 U.S.C. 'M. bias or producte of the Judge. 10-105-10-76 Pited Pitf's. affidavit under 28 U.S.C. 'M. bias or producte of na appeal to the U.S.C.A. 10-11-76 Pited Pitf's of certification & transmittal of the supplemental record on appeal to the U.S.C.A. 10-01-76 Pited Pitf's. supplementary affidavit under 28 U.S.C. 144 on ground of bias of the Judge. 10-01-76 Pited Pitf's. supplementary affidavit under 28 U.S.C. 144 on ground of bias of the Judge. 10-01-76 Pited Pitf's. supplementary affidavit under 28 U.S.C. 144 on ground of bias of the Judge. 10-01-76 Pited Pitf's. supplementary affidavit under 28 U.S.C. 144 on ground of bias of the Judge. 10-01-76 Pited Pitf's. supplementary affidavit under 28 U.S.C. 144 on ground of bias of the Judge. 10-01-76 Pited Pitf's. supplementary affidavit under 28 U.S.C. 144 on ground of bias of the U.S.C.A. 10-01-76 Pited Notice of certification & transmittal of the supplemental record on appeal to the U.S.C.A. 10-01-76 Pited Notice of certification & transmittal of the supplemental record on appeal to the U.S.C.A. 10-01-76 Pited Notice of certification & transmittal of the supplemental record on appeal to the U.S.C.A. 10-01-76 Pited Notice of certification & transmittal of the supplemental record on appeal to the U.S.C.A. 10-01-76 Pited Notice of certification & transmittal of the supplemental r	
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UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, N. Y.

KENIL K. GOSS,
Plaintiff-Appellant Pro Se

REVLON, INCORPORATED and its wholly owned subsidiary, USV PHARMACEUTICAL CORPORATION,

Defendants-Appellees

DISCRIMINATION APPEAL FROM THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

THE PLAINTIFF-APPELLANT'S

BRIEF

DATE: Tuesday, February 1, 1977

Delivered Personally by the Plaintiff-Appellant Today.

Plaintiff-Appellant Pro Se

K. K. Goss

THE GENTRY, APARTMENT 618
21 FAIRVIEW AVENUE

TUCKAHOE, WESTCHESTER, N. Y. 10707

U. S. A.

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